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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

A.C.T. 898 PRODUCTS, INC., a  
California Corporation,

*Plaintiff,*

*vs.*

W.S. INDUSTRIES, INC.; VINH LAM,  
an individual; and DOES 1 through 10,  
inclusive,

*Defendants.*

Case No: 8:16-cv-476

**COMPLAINT FOR TRADEMARK  
INFRINGEMENT; FALSE  
ADVERTISING; PALMING OFF;  
CONTRIBUTORY TRADEMARK  
INFRINGEMENT; VICARIOUS  
TRADEMARK INFRINGEMENT;  
FALSE DESIGNATION OF  
ORIGIN; UNFAIR COMPETITION  
UNDER CAL. BUS. & PROF. CODE  
17200 ET SEQ.; AND COMMON  
LAW UNFAIR COMPETITION**

**DEMAND FOR JURY TRIAL**

1 Plaintiff A.C.T. 898 Products, Inc., (“Plaintiff” or “ACT”) hereby complains  
2 of W.S. INDUSTRIES, INC., a California incorporated company; VINH LAM, an  
3 individual; and DOES 1-10 (collectively and individually in any combination,  
4 “Defendants”), and alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has original subject matter jurisdiction over the claims that  
7 relate to trademark infringement, false designation of origin, trademark dilution, and  
8 federal unfair competition pursuant to sections 34(a) and 39(a) of the Lanham Act  
9 and 15 U.S.C. §§ 1116(a) and 1121(a) pursuant to 28 U.S.C. § 1331 and 1338(a), as  
10 these claims arise under the laws of the United States. This Court has supplemental  
11 jurisdiction over the claims in this Complaint which arise under state statutory and  
12 common law pursuant to 28 U.S.C. § 1367(a) because the state law claims are so  
13 related to the federal claims that they form part of the same case or controversy and  
14 derive from a common nucleus of operative facts.

15 2. Plaintiff is informed and believes, and thereon alleges that this Court  
16 has personal jurisdiction over the Defendants because they have a continuous,  
17 systematic, and substantial presence within this judicial district. For example, by  
18 marketing their products and goods to California citizens and by entering into  
19 business transactions with California citizens in the jurisdiction, and by committing  
20 acts of trademark infringement in this judicial district, including but not limited to  
21 marketing, offering, and selling infringing products directly to consumers and users  
22 in this district, Defendants’ acts form a substantial part of the events or omissions  
23 giving rise to ACT’s claims.

24 3. The Plaintiff is informed and believes, and thereon alleges that this  
25 Court has personal jurisdiction over the Defendants because the Defendants also did  
26 business in this judicial district, prior to the date hereof, with respect to the causes of  
27 action on which the complaint is based, such as entering into contracts based on the  
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1 Defendants' infringing activities as herein complained.

2 4. The Plaintiff is informed and believes, and thereon alleges that this  
3 Court has personal jurisdiction over the Defendants because the Defendants also  
4 took actions that caused effects here in this judicial district such as damaging  
5 Plaintiff by and through Defendants' infringing activities as herein complained.

6 5. Venue is proper in this Judicial District pursuant to 28 U.S.C. §1391(b)  
7 and (c).

## 8 **II. THE PARTIES**

9 6. Plaintiff A.C.T. 898 Products, Inc. is a corporation organized and  
10 existing under the laws of the State of California, having its principal place of  
11 business at 14309 Proctor Ave., La Puente, CA 91746.

12 7. Plaintiff is informed and believes, and thereon alleges, that Defendant  
13 W.S. Industries, Inc. ("W.S.") is a California incorporated company having its  
14 principal place of business at 7375 Chapman Ave., Garden Grove, CA 92841.

15 8. Plaintiff is informed and believes, and thereon alleges that Defendant  
16 Vinh Lam ("Lam") is an owner and principal of W.S. and resides in the county of  
17 Garden Grove, California.

18 9. Plaintiff is ignorant of the true names and capacities, whether  
19 individual, corporate, associate, partnership, or otherwise of each of the Defendants  
20 sued herein as Does 1 through 10, inclusive, and therefore sues said Defendants by  
21 such fictitious names. Plaintiff will seek leave to amend this Complaint to reflect  
22 their true names and capacities as they are ascertained.

23 10. Plaintiff is ignorant of the true names and capacities, whether  
24 individual, corporate, associate, partnership, or otherwise of each of the Defendants  
25 sued herein as Does 1 through 10, inclusive, and therefore sues said Defendants by  
26 such fictitious names. Such unnamed defendants include, but are not limited to: (a)  
27 officers and/or directors who acted in concert with Defendants against Plaintiff; (b)  
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1 other entities affiliated with Defendants that acted in concert with Defendants  
2 against Plaintiff; and (c) individuals or entities with whom Defendants acted in  
3 concert with Defendants against Plaintiff. Plaintiff reserves the right to name such  
4 Does as discovery from Defendants reveal their identities.

5 11. Plaintiff is informed and believes and thereon alleges that each of the  
6 Defendants named herein as a Doe was and is negligently, intentionally, or both  
7 negligently and intentionally responsible in some manner for the occurrences herein  
8 alleged, and the injuries and damages suffered by Plaintiff as herein alleged were the  
9 direct and proximate result of, and caused by the acts and omissions of the  
10 Defendants.

11 12. All of the Defendants, including the Doe Defendants, are alleged to be  
12 co-conspirators with each other, in that each agreed to participate and participated in  
13 the furtherance of the objective of a civil wrong as alleged in this Complaint.

14 13. Plaintiff is informed and believes and thereon alleges that each  
15 Defendant entered into a conspiracy and agreement with the other Defendants  
16 and/or subsequently joined said conspiracy and ratified the prior acts and conduct of  
17 the Defendants who had previously entered into said conspiracy. Plaintiff is  
18 currently unaware of when each Defendant joined said conspiracy and, upon  
19 information and belief, alleges that Defendant joined said conspiracy and, upon  
20 information and belief, alleges that all Defendants have knowingly, maliciously, and  
21 willfully entered into said conspiracy, which continues until this day. The purposes  
22 of this ongoing conspiracy include, but are not limited to, the wrongs alleged herein.  
23 All Defendants' acts and failures to act as alleged herein were perpetrated in  
24 furtherance of the ongoing conspiracy.

25 14. Plaintiff is informed and believes and thereon alleges that, at all times  
26 material herein, each of the Defendants was the agent, employee and/or working in  
27 concert with the other Co-Defendants and was acting within the course and scope of  
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1 such agency, employment and/or concerted activity.

2 15. To the extent that certain acts and omissions were perpetrated by  
3 certain Defendants, the remaining Defendant or Defendants confirmed and ratified  
4 said acts and omissions.

5 16. Whenever and wherever reference is made in this Complaint to any act  
6 by a Defendant or Defendants, such allegations and reference shall also be deemed  
7 to mean the acts and failures to act of each Defendant acting individually, jointly,  
8 and severally.

9 17. Whenever and wherever reference is made to individuals who are not  
10 named as Plaintiff or Defendants in this Complaint but were employees/agents of  
11 each other Defendant, such individuals acted on behalf of each Defendant within the  
12 scope of their employment.

13 18. Plaintiff is informed and believes, and thereon alleges that Defendants  
14 were associated or affiliated with one or more of the other Defendants in connection  
15 with matters and conduct sued upon herein. Plaintiffs allege that each Defendant  
16 was acting with one or more of the other Defendants pursuant to a common scheme,  
17 course of action, enterprise or conspiracy and each Defendant is liable to Plaintiff  
18 for the events happenings and damages alleged herein.

19 19. Plaintiff is informed and believes, and thereon alleges that Defendants  
20 DOES 1 through 5 ("Individual Defendants") are, and at all relevant times herein  
21 were, owners of all or a controlling interest in W.S. and DOES 6 through 10 ("Entity  
22 Defendants"), and that there existed between the Individual Defendants and Entity  
23 Defendants, and each of them, a unity of interest and ownership, such that any  
24 individuality or separateness of such Defendants never existed or has ceased, and  
25 that the Entity Defendant are the alter egos of the Individual Defendants, and each  
26 other.  
27

28 20. Plaintiff is informed and believes, and thereon alleges that Individual

1 Defendants dominated and controlled the business affairs of the Entity Defendants,  
2 and each of them. As a result, adherence to the fiction of a separate existence  
3 between such Defendants would permit an abuse of the corporate privilege and  
4 would sanction fraud and promote injustice.

5 21. Plaintiff is informed and believes, and thereon alleges that the Court  
6 can pierce the corporate veil of the Entity Defendants and hold Individual  
7 Defendants individually liable because of the improper activities as follows:

- 8 a. Defendants failed to maintain or observe corporate formalities  
9 when they violated Corporate By Laws by refusing to hold  
10 proper Board of Director meetings and refused to hold Annual  
11 Shareholder Meetings;
- 12 b. Defendants failed to maintain or observe corporate formalities  
13 when they prevented shareholders to regularly elect the Board of  
14 Directors in violation of the Corporate By Laws;
- 15 c. Defendants failed to maintain or observe corporate formalities  
16 when they failed to keep minutes or file corporate tax returns;
- 17 d. Individual Defendants commingled corporate fund with their  
18 personal funds;
- 19 e. Individual Defendants used their residence as the Entity  
20 Defendants' business addresses; and
- 21 f. Individual Defendants under-capitalized the Entity Defendants.

22 22. Based upon the foregoing, Plaintiff is informed and believes, and  
23 thereon alleges that the Entity Defendants are the alter egos of the Individual  
24 Defendants and each other, therefore, Plaintiff may proceed against all Defendants  
25 directly, as they are each liable jointly and severally for any and all damages  
26 suffered by Plaintiff.  
27

28 23. Whenever appearing in this Complaint, all references to "Defendant(s)"

are intended to be, and shall be deemed, a reference to all Defendants in this action, and each of them, named and unnamed, including all fictitiously named Defendants.

### III. COMMON ALLEGATIONS FOR ALL CLAIMS OF RELIEF

24. Plaintiff is in the business of providing the manufacture, distribution, and wholesale supply of beauty products, specifically including, but not limited to, nail art brushes, across the U.S. and around the world, and has been in that business since 1997. ACT uses several trade names and marks to identify its services and products, specifically including, *inter alia*, “777.” (the “777 MARK”) for its acrylic nail brushes.

25. ACT was the first entity to use the 777 MARK in association with acrylic nailbrushes in the retail beauty product community in the U.S. and around the world. As a result of ACT’s widespread usage of the 777 MARK, the 777 MARK have become extensively known and ACT has become identified in the public mind as the provider of the acrylic brushes identified by the 777 MARK.

26. ACT has applied for and has obtained several United States trademarks, including U.S. Trademark Registration number 3,893,221, for its 777 MARK. Attached hereto as **Exhibit 1** is a true and correct copy of the trademark registration for the 777 MARK, which is incorporated herein by reference.

27. The 777 MARK has not been abandoned, canceled, or revoked.

28. The 777 MARK includes federally registered trademark as well as common law trademark rights.

29. Since at least the 1997, when ACT launched its advertising, marketing and directory services, and up to the present, ACT has extensively developed, promoted, advertised, and marketed its brands, including, but not limited to, the 777 MARK.

30. ACT has spent significant amounts of money and resources developing, promoting, and advertising its 777 MARK so that the public recognizes the services



1 associated with the 777 MARK, and recognizes that the 777 MARK comes from  
2 ACT.

3 31. As a result of the widespread use and display of the 777 MARK as a  
4 distinctive trademark identifying, *inter alia*, acrylic brushes, (a) the public has come  
5 to recognize and identify products bearing the 777 MARKS as emanating from  
6 ACT; (b) the public recognizes that services bearing the 777 MARK constitute high  
7 quality, dependable acrylic nail brushes that conform to the standards of quality and  
8 care created by ACT; (c) the 777 MARK has established a strong secondary  
9 meaning and extensive goodwill throughout the world among the retail beauty  
10 product community; and (d) the 777 MARK has achieved incontestable status.

11 32. ACT is informed and believes, and thereon alleges that Defendants, at  
12 all times herein, saw, knew, and were familiar with ACT and the 777 MARK as  
13 Defendants had previously been regular, ongoing customers of ACT placing  
14 multiple orders for the acrylic brushes bearing the 777 MARK. Plaintiff sent a  
15 cease and desist letter to Defendants on May 3, 2011, and received a response letter  
16 dated May 6, 2011 regarding the 777 MARK and the Defendants' activities.  
17 Defendants stated they would "never use make use of the '777' trademark without  
18 prior written authority" from Plaintiff; however, Plaintiff has good cause to believe  
19 that Defendants have continued to sell products using the 777 MARK continuously  
20 since before receipt of Plaintiff's letter, up to the present.

21 33. ACT is informed and believes, and on that basis alleges that Defendant  
22 Lam is the sole owner and principal of Defendant W.S., and is responsible for and  
23 directs its activities. As such, Lam is the moving force behind W.S.'s activities. For  
24 at least the reasons herein, Lam is directly and/or secondarily liable for W.S.'s  
25 activities.

26 34. For, at least, several months, Defendants have been advertising,  
27 marketing, and offering for sale acrylic nail brushes under the 777 MARK, in  
28



1 catalogues, print advertisements, and on their respective websites, which are  
2 identical, closely resemble, and/or are substantially indistinguishable from the 777  
3 MARK directed to the retail beauty product community.

4 35. ACT is informed and believes, and thereon alleges that Defendants' use  
5 of the marks that are identical, closely resemble or are substantially identical to the  
6 777 MARK is done with the intent, as ACT is informed and believes, and thereon  
7 alleges, to divert ACT's customers seeking the 777 acrylic nail brushes to the  
8 Defendants.

9 36. ACT is informed and believes, and thereon alleges that Defendants' use  
10 of mark, which closely resembles and is substantially indistinguishable from the 777  
11 MARK, has been with the intent to confuse consumers that the Defendants are  
12 associated, affiliated, sponsored by, and/or in some way are endorsed by ACT.

13 37. ACT is informed and believes, and thereon alleges that Defendants' use  
14 of mark, which closely resembles and is substantially indistinguishable from the 777  
15 MARK, has been with knowledge and deliberate disregard that ACT owns the 777  
16 MARK and has therefore been deliberate and willful.

17 38. ACT is informed and believes, and therefore alleges that Lam  
18 intentionally induced W.S. to infringe ACT's protected mark.  
19

#### 20 **IV. CLAIMS FOR RELIEF**

#### 21 **FIRST CLAIM FOR RELIEF**

#### 22 **(Federal Trademark Infringement and Counterfeiting)**

#### 23 **(15 U.S.C. § 1114)**

#### 24 **(Against All Defendants)**

25 39. ACT repeats and re-alleges the allegations of paragraphs 1-38 of this  
26 Complaint as if set forth fully herein.

27 40. As its first ground for relief, Plaintiff alleges federal trademark  
28 infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

1        41. As set forth above, Defendants have engaged in acts of direct  
2 infringement by the use of the 777 MARK without ACT's consent.

3        42. As set forth above, Defendants, and each of them, are directly liable for  
4 the direct acts of infringement committed by them.

5        43. ACT is informed and believes, and thereon alleges that long after  
6 ACT's adoption and use of the 777 MARK, Defendants have adopted and used in  
7 commerce an identical or substantially indistinguishable version of the 777 MARK  
8 without ACT's consent in a manner that infringes upon ACT's rights in the 777  
9 MARK.

10       44. Plaintiff's 777 MARK is inherently distinctive as applied to Plaintiff's  
11 goods that bear the mark, and the 777 MARK has achieved incontestable status.

12       45. Without ACT's consent, Defendants used and are using in commerce  
13 marks that are identical or substantially indistinguishable to the 777 MARK in  
14 connection with the promotion, marketing, advertising of acrylic nail brushes in a  
15 manner which is likely to cause confusion, or to cause mistake, or to deceive.

16       46. ACT is informed and believes, and thereon alleges that Defendants did  
17 so with actual knowledge of ACT's ownership and prior use of the 777 MARK, and  
18 with the intent to unfairly compete with ACT, to trade upon ACT's reputation and  
19 goodwill by causing confusion and mistake among customers and the public, and to  
20 deceive the public into believing that Defendants' goods are associated with,  
21 sponsored by, originate from, or are approved by ACT, when they are not.

22       47. Plaintiff has requested, in writing, that Defendant cease and desist from  
23 its infringing actions; however, Defendant has failed to comply with them.  
24 Plaintiff's letter to Defendant is attached as Plaintiff's Exhibit B.

25       48. ACT is informed and believes, and thereon alleges, that Defendants'  
26 activities constitute willful and intentional infringement and counterfeiting of the  
27 777 MARK, directly and/or indirectly, in total disregard of ACT's proprietary  
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1 rights. These activities transpired despite Defendants' knowledge that the use of the  
2 777 MARK was, and is, in direct contravention of ACT's rights, as well as in direct  
3 competition with ACT.

4 49. ACT is informed and believes, and thereon alleges, that Defendants  
5 have derived and received, and will continue to derive and receive, gains, profits,  
6 and advantages from the use of the 777 MARK in an amount that is not presently  
7 known to ACT. Due to Defendants' actions constituting unauthorized use of the 777  
8 MARK, ACT has been damaged and is entitled to monetary relief in an amount to  
9 be determined at trial.

10 50. Due to Defendants' actions constituting unauthorized use of the 777  
11 MARK, ACT has suffered and continues to suffer great and irreparable injury, for  
12 which ACT has no adequate remedy at law.

13 **SECOND CLAIM FOR RELIEF**  
14 **(Federal Contributory Trademark Infringement)**  
15 **(15 U.S.C. § 1114)**  
16 **(Against Lam)**

17 51. ACT repeats and re-alleges the allegations of paragraphs 1-47 of this  
18 Complaint as if set forth fully herein.

19 52. As set forth above ACT is informed and believes, and thereon alleges,  
20 that W.S. has engaged in acts of direct infringement by the use of the 777 MARK  
21 without ACT's consent.

22 53. As set forth above, ACT is informed and believes, and thereon alleges,  
23 that Lam is contributorily liable for the direct acts of infringement committed by  
24 W.S. in view of the relationship between and among them.

25 54. ACT is informed and believes, and thereon alleges, that, by reason of  
26 Lam's actions and/or inactions, concerning unauthorized use of the 777 MARK,  
27 ACT has been damaged and is entitled to monetary relief in an amount to be  
28

1 determined at trial.

2 55. ACT is informed and believes, and thereon alleges, that due to Lam's  
3 actions and/or inactions, constituting unauthorized use of the 777 MARK, ACT has  
4 suffered and continues to suffer great and irreparable injury, for which ACT has no  
5 adequate remedy at law.

6 **THIRD CLAIM FOR RELIEF**  
7 **(Federal Vicarious Trademark Infringement)**  
8 **(15 U.S.C. § 1114)**  
9 **(Against Lam)**

10 56. ACT repeats and re-alleges the allegations of paragraphs 1-52 of this  
11 Complaint as if set forth fully herein.

12 57. As set forth above, ACT is informed and believes, and thereon alleges,  
13 that W.S. has engaged in acts of direct infringement by the use of the 777 MARK  
14 without ACT's consent.

15 58. As set forth above, ACT is informed and believes, and thereon alleges,  
16 that Lam is vicariously liable for the direct acts of infringement committed by W.S.  
17 in view of the relationship between and among them.

18 59. ACT is informed and believes, and thereon alleges, that, by reason of  
19 Lam's actions and/or inactions, concerning unauthorized use of the 777 MARK,  
20 ACT has been damaged and is entitled to monetary relief in an amount to be  
21 determined at trial.

22 60. ACT is informed and believes, and thereon alleges, that, due to Lam's  
23 actions and/or inactions, constituting unauthorized use of the 777 MARK, ACT has  
24 suffered and continues to suffer great and irreparable injury, for which ACT has no  
25 adequate remedy at law.

26 ///

27 ///

**FOURTH CLAIM FOR RELIEF**

**(Federal Unfair Competition & False Designation of Origin)**

**(15 U.S.C. § 1125(a))**

**(Against All Defendants)**

61. ACT repeats and re-alleges the allegations of paragraphs 1-57 of this Complaint as if set forth fully herein.

62. Plaintiff alleges federal unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

63. As set forth above, ACT is informed and believes, and thereon alleges, that Defendants, and each of them, have engaged in acts of direct infringement by the use of the 777 MARK without ACT's consent.

64. As set forth above, ACT is informed and believes, and thereon alleges, that Lam is contributorily and vicariously liable for the direct acts of infringement committed by W.S. in view of the relationship between them.

65. ACT is informed and believes, and thereon alleges, that Defendants' direct and indirect use of the 777 MARK without ACT's consent constitutes a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods or commercial activities by another person in violation of 15 U.S.C. § 1125(a).

66. ACT is informed and believes, and thereon alleges, that Defendants' direct and indirect use of the 777 MARK without ACT's consent constitutes a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods or commercial activities in violation of 15 U.S.C. § 1125(a).

67. ACT is informed and believes, and thereon alleges, that such conduct by Defendants is likely to confuse, mislead, and deceive Defendants' customers and members of the public as to the origin of Defendants' products or cause said persons to believe that Defendants and/or their products have been sponsored, approved, authorized, or licensed by ACT or are in some way affiliated or connected with ACT, when they are not, all in violation of 15 U.S.C. § 1125(a).

1 Complaint as if set forth fully herein.

2 73. The acrylic nail brushes offered by ACT under the 777 MARK have  
3 been widely advertised, promoted, and distributed to the retail beauty product  
4 community throughout the United States and the world.

5 74. Plaintiff's 777 MARK has become distinctive and famous as a result of  
6 many years of nationwide use and promotion of the mark by the Plaintiff.

7 75. Defendants' first use of the 777 MARK in interstate commerce  
8 occurred many years after Plaintiff's 777 MARK had become famous.

9 76. Acrylic nail brushes offered under the 777 MARK are known to the  
10 consumers in the retail beauty product community in the United States and  
11 throughout the world as representing reliable, high quality products, which are  
12 offered under sound merchandising and customer service conditions. As a result, the  
13 777 MARK, and the goodwill associated therewith, are of great value to ACT.

14 77. By virtue of the wide renown acquired by the 777 MARK in the beauty  
15 product community, coupled with the national and international distribution and  
16 extensive use of acrylic nail brushes offered under this trademark, each of the 777  
17 MARK has become famous.

18 78. ACT is informed and believes, and thereon alleges that once  
19 Defendants began to use marks which are identical, closely resemble, or are  
20 substantially indistinguishable from the 777 MARK, ACT started to receive calls  
21 from its customers and members claiming that those customers and members called  
22 Defendants' believing that they were able to get ACT's products, or Defendants'  
23 businesses were affiliated with ACT, and were upset and confused when they  
24 realized that Defendants were not affiliated with ACT or selling ACT's products.  
25 Since that time, ACT has received numerous, similar communications from  
26 customers.  
27

28 79. ACT has also seen a reduction in its business since the Defendants



1 began to use marks, which are identical, closely resemble, or are substantially  
2 indistinguishable from one or all of the 777 MARK.

3 80. ACT is informed and believes, and thereon alleges that Defendants'  
4 actions were done willfully with intent to exploit ACT's reputation and dilute the  
5 777 MARK.

6 81. By reason of the aforesaid acts constituting trademark dilution, ACT  
7 has been damaged and is entitled to monetary relief in an amount to be determined  
8 at trial.

9 82. Due to Defendants' actions, constituting trademark dilution, ACT has  
10 suffered and continues to suffer great and irreparable injury, for which ACT has no  
11 adequate remedy at law.

12 **SIXTH CLAIM FOR RELIEF**

13 **(California Common Law Trademark Infringement)**

14 **(Against All Defendants)**

15 83. ACT repeats and re-alleges the allegations of paragraphs 1-76 of this  
16 Complaint as if set forth fully herein.

17 84. ACT is informed and believes, and thereon alleges, that Defendants'  
18 acts complained of herein constitute trademark infringement under California  
19 common law. ACT is informed and believes, and thereon alleges, that Defendants'  
20 acts complained of herein are willful and deliberate and committed with knowledge  
21 that Defendants' unauthorized use of the 777 MARK causes a likelihood of  
22 confusion.

23 85. ACT is informed and believes, and thereon alleges, that Defendants  
24 have derived and received and will continue to derive and receive, gains, profits and  
25 advantages from Defendants' trademark infringement in an amount that is not  
26 presently known to ACT. By reason of Defendants' wrongful acts as alleged in this  
27 Complaint, ACT has been damaged and is entitled to monetary relief in an amount  
28

1 to be determined at trial.

2 86. Due to Defendants' trademark infringement, ACT has suffered and  
3 continues to suffer great and irreparable injury for which ACT has no adequate  
4 remedy at law.

5 87. Defendants' willful acts of trademark infringement under California  
6 common law constitute fraud, oppression, and malice. Accordingly, ACT is entitled  
7 to exemplary damages.

8 **SEVENTH CLAIM FOR RELIEF**  
9 **(California Unfair Competition)**  
10 **(Against All Defendants)**

11 88. ACT repeats and re-alleges the allegations of paragraphs 1-81 of this  
12 Complaint as if set forth fully herein.

13 89. ACT is informed and believes, and thereon alleges, that Defendants'  
14 acts of trademark infringement, false designation of origin and trademark dilution,  
15 complained of herein constitute unfair competition with ACT under the statutory  
16 laws of the State of California, particularly California Business & Professions Code  
17 § 17200 et seq.

18 90. ACT is informed and believes, and thereon alleges, that Defendants  
19 have derived and received, and will continue to derive and receive, gains, profits and  
20 advantages from Defendants' unfair competition in an amount that is not presently  
21 known to ACT. By reason of Defendants' alleged wrongful acts as alleged in this  
22 Complaint, ACT has been damaged and is entitled to monetary relief in an amount  
23 to be determined at trial.

24 91. ACT is informed and believes, and thereon alleges, that, by their  
25 actions, Defendants have injured and violated the rights of ACT and have  
26 irreparably injured ACT, and such irreparable injury will continue unless  
27 Defendants are enjoined by this Court.  
28

**EIGHTH CLAIM FOR RELIEF****(Trademark Infringement by Imitating and False Advertising)****(15 U.S.C. § 1114(a) and (b))****(Against All Defendants)**

92. ACT repeats and re-alleges the allegations of paragraphs 1-85 of this Complaint as if set forth fully herein.

93. As set forth above, ACT is informed and believes, and thereon alleges, that Defendants have engaged in acts of direct infringement by the use of the 777 MARK without ACT's consent.

94. As set forth above, ACT is informed and believes, and thereon alleges, that Defendants, and each of them, are directly liable for the direct acts of infringement committed by them.

95. ACT is informed and believes, and thereon alleges that long after ACT's adoption and use of each of the 777 MARK, Defendants have adopted and used in commerce marks which are identical, closely resemble, or are substantially indistinguishable from the 777 MARK without ACT's consent in a manner that infringes upon ACT's rights in the 777 MARK in violation of 15 U.S.C. § 1114(a).

96. ACT is informed and believes, and thereon alleges, that, without ACT's consent, Defendants use in commerce marks which are identical, closely resemble, or are substantially indistinguishable from the 777 MARK in connection with the promotion, marketing, advertising of acrylic nail brushes in a manner which is likely to cause confusion, or to cause mistake, or to deceive.

97. ACT is informed and believes, and thereon alleges, that Defendants did so with actual knowledge of ACT's ownership and prior use of the 777 MARK, and with the intent to unfairly compete with ACT, to trade upon ACT's reputation and goodwill by causing confusion and mistake among customers and the public, and to deceive the public into believing that Defendants' products are associated with,

1 sponsored by, originate from, or are approved by ACT, when they are not.

2 98. ACT is informed and believes, and thereon alleges, that Defendants'  
3 acted willfully and intentionally to infringe of the 777 MARK, directly and/or  
4 indirectly, in total disregard of ACT's proprietary rights, and were done despite  
5 Defendants' knowledge that the use of the 777 MARK was and is in direct  
6 contravention of ACT's rights.

7 99. ACT is informed and believes, and thereon alleges, that Defendants  
8 have derived and received, and will continue to derive and receive, gains, profits,  
9 and advantages from the use of the 777 MARK in an amount that is not presently  
10 known to ACT. By reason of Defendants' alleged actions, constituting unauthorized  
11 use of the 777 MARK, ACT has been damaged and is entitled to monetary relief in  
12 an amount to be determined at trial.

13 100. Due to Defendants' actions, constituting unauthorized use of the 777  
14 MARK, ACT has suffered and continues to suffer great and irreparable injury, for  
15 which ACT has no adequate remedy at law.

### 16 **NINTH CLAIM FOR RELIEF**

#### 17 **(Common Law Unfair Competition & False Designation of Origin)**

#### 18 **(Palming or Passing Off)**

#### 19 **(Against All Defendants)**

20 101. ACT repeats and re-alleges the allegations of paragraphs 1-94 of this  
21 Complaint as if set forth fully herein.

22 102. As set forth above, Plaintiff is informed and believes, and thereon  
23 alleges that Defendants, and each of them, have used marks which are identical,  
24 closely resemble, and/or are substantially indistinguishable from one or all of the  
25 777 MARK without ACT's consent.

26 103. In fact, ACT has received communications from its customers and  
27 members indicating that they were deceived and confused by the Defendants' use of  
28

1 marks which are identical, closely resemble, and/or are substantially  
2 indistinguishable from one or all of the 777 MARK.

3 104. ACT is informed and believes, and thereon alleges, that Defendants'  
4 use of marks which are identical, closely resemble, or are substantially  
5 indistinguishable from one or all of the 777 MARK without ACT's consent  
6 constitutes a false designation of origin, false or misleading description of fact, or  
7 false or misleading representation of fact, which has and is likely to further cause  
8 confusion, or to cause mistake, or to deceive as to the source of Defendants'  
9 products.

10 105. ACT is informed and believes, and thereon alleges, that such conduct  
11 by Defendants has and is likely to further confuse, mislead, and deceive ACT's and  
12 Defendants' customers and members of the public as to the origin of Defendants'  
13 products or cause said persons to believe that Defendants and/or their products have  
14 been sponsored, approved, authorized, or licensed by ACT or are in some way  
15 affiliated or connected with ACT, when they are not.

16 106. ACT is informed and believes, and thereon alleges that Defendants'  
17 actions were undertaken willfully with full knowledge of the falsity of such  
18 designation of origin and false descriptions or representations.

19 107. ACT is informed and believes, and thereon alleges, that Defendants  
20 have derived and received, and will continue to derive and receive, gains, profits,  
21 and advantages from Defendants' false designation of origin, false or misleading  
22 statements, descriptions of fact, or false or misleading representations of fact in an  
23 amount that is not presently known to ACT.

24 108. ACT is informed and believes, and thereon alleges, that, by reason of  
25 Defendants' actions, constituting false designation of origin, false or misleading  
26 statements, false or misleading descriptions of fact, or false or misleading  
27 representations of fact, ACT has been damaged and is entitled to monetary relief in  
28

1 an amount to be determined at trial.

2 109. Due to Defendants' alleged actions, constituting false designation of  
3 origin, false or misleading statements, false or misleading description of fact, or  
4 false or misleading representations of fact, ACT has suffered and continues to suffer  
5 great and irreparable injury, for which ACT has no adequate remedy at law.

6 **TENTH CLAIM FOR RELIEF**

7 **(California False Advertising)**

8 **(Against All Defendants)**

9 110. ACT repeats and re-alleges the allegations of paragraphs 1-103 of this  
10 Complaint as if set forth fully herein.

11 111. As set forth above, Plaintiff is informed and believes, and thereon  
12 alleges that Defendants, and each of them, have used marks in their advertising  
13 which are identical, closely resemble, and/or are substantially indistinguishable from  
14 one or all of the 777 MARK without ACT's consent.

15 112. In fact, ACT has received communications from its customers  
16 indicating that they were deceived and confused by the Defendants' use of marks  
17 which are identical, closely resemble, or are substantially indistinguishable from one  
18 or all of the 777 MARK.

19 113. ACT is informed and believes, and thereon alleges, that Defendants'  
20 use of marks which are identical, closely resemble, or are substantially  
21 indistinguishable from one or all of the 777 MARK is misleading, has and is likely  
22 to further mislead, cause confusion, or to cause mistake, or to deceive as to the  
23 source of Defendants' products.

24 114. ACT is informed and believes, and thereon alleges, that such conduct  
25 by Defendants has and is likely to further confuse, mislead, and deceive ACT's  
26 customers and members of the public as to the origin of Defendants' products or  
27 cause said persons to believe that Defendants and/or their products have been  
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1 sponsored, approved, authorized, or licensed by ACT or are in some way affiliated  
2 or connected with ACT, when they are not.

3 115. Plaintiff is informed and believes, and thereon alleges that Defendants'  
4 actions were undertaken in an attempt to divert and secure Plaintiff's customers and  
5 business from Plaintiff.

6 116. Plaintiff is informed and believes, and thereon alleges that Defendants'  
7 actions were undertaken willfully with full knowledge that using marks, which  
8 closely resemble and are substantially indistinguishable from one or all of the 777  
9 MARK would mislead ACT's customers, and would also mislead the general  
10 consuming public.

11 117. ACT is informed and believes, and thereon alleges, that Defendants  
12 have derived and received, and will continue to derive and receive, gains, profits,  
13 and advantages from Defendants' false advertising in an amount that is not presently  
14 known to ACT.

15 118. By reason of Defendants' alleged actions, constituting false or  
16 misleading advertising, ACT has been damaged and is entitled to monetary relief in  
17 an amount to be determined at trial.

18 119. Due to Defendants' alleged actions, constituting false or misleading  
19 advertising, ACT has suffered and continues to suffer great and irreparable injury,  
20 for which ACT has no adequate remedy at law.  
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**V. PRAYER FOR RELIEF**

**WHEREFORE**, ACT prays for judgment in its favor against Defendants for the following relief:

A. A preliminary and permanent injunction against Defendants, their officers, agents, servants, employees, representatives, successors, and assigns, and all persons, firms, or corporations in active concert or participation with Defendants, enjoining them from engaging in the following activities and from assisting or inducing, directly or indirectly, others to engage in the following activities:

1. using any of the 777 MARK, or any other mark, symbol, or logo that is confusingly similar to any of the 777 MARK on or in connection with any products, including but not limited to, marketing, advertising and selling or offering for sale acrylic nail brushes;
2. falsely designating the origin of Defendants' products;
3. unfairly competing with ACT in any manner whatsoever;
4. making false or misleading statements, descriptions of fact, or false or misleading representations of fact;
5. causing a likelihood of confusion or injuries to ACT's business reputation; and
6. manufacturing, using, displaying, distributing, or selling any goods that infringe any of the 777 MARK.

B. That Defendants be required to account for any and all profits derived by their acts of trademark infringement, false designation of origin, trademark dilution, and unfair competition complained of in this Complaint.

C. That Defendants' acts of trademark infringement and counterfeiting, false designation of origin, trademark dilution and unfair competition, complained of in this Complaint be deemed willful, that this be deemed an exceptional case, and that ACT be entitled to enhanced damages.

D. That ACT be awarded damages for Defendants' trademark infringement and counterfeiting pursuant to 15 U.S.C. § 1117 in the form of either:

(i) Defendants' profits, damages sustained by ACT, and the costs of the action; or

(ii) statutory damages pursuant to 15 U.S.C. § 1117(c), at ACT's election before the entry of a final judgment.

E. That the amount of the profits or damages be increased three times, pursuant to 15 U.S.C. §1117(b), to properly compensate ACT for Defendants' actions.

F. The ACT be awarded damages for Defendants' common law trademark infringement, and unfair competition pursuant to California Business & Professions Code § 17200 et seq and § 17500.

G. That Defendants' acts of trademark infringement and unfair competition complained of in this Complaint be deemed willful; that this be deemed an exceptional case; and that ACT be entitled to enhanced damages.

H. An award of pre-judgment and post-judgment interest and costs of this action against Defendants.

I. An award of attorneys fees and costs.

J. Such other and further relief as this Court may deem just.

ADLI LAW GROUP, P.C.

DATED: March 11, 2016

By: /s/ Dariush G. Adli

Dr. Dariush G. Adli, Esq.

Drew H. Sherman, Esq.

*Attorneys for Plaintiff*

A.C.T. 898 Products, Inc.